

REMARKS

The following remarks are responsive to the Official Action mailed June 9, 2006.

In the Official Action, claim 4 is rejected under 35 U.S.C. § 112, second paragraph. In response to this rejection, Applicant has amended claim 4 so as to properly claim the present invention. No new matter has been added to the application as a result of this amendment.

Claim Rejection — 35 U.S.C. § 102 — Anderson

Claims 1, 2, 5-11, 19, 22, 24, 26, 29, and 31-33 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,343,551 to Anderson. Applicant has amended independent claim 1 of the present application to include the recitation that the core of the applicator includes a twisted-wire. The twisted-wire includes a bristle-carrying portion and a plurality of bristles extending from the bristle-carrying portion. Support for the core being a twisted-wire can be found in paragraph [0050] of the present application. No new matter has been added to the present application as a result of any of these amendments.

In contrast, Anderson discloses a core or base 10 that is comprised of a polystyrene plastic. The polystyrene plastic base 10 of Anderson is formed or molded integrally with the elongated handle portion 14. Support for this can be found at column 3, lines 34-39. Thus, Anderson does not anticipate newly amended claim 1, as well as claims 2-34, which depend from claim 1.

Claim Rejection — 35 U.S.C. § 102 — Cassai

Claims 1, 5-11, and 29-33 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,165,755 to Cassai. Similar to Anderson, Cassai discloses a core which is formed from a flexible pre-bent filament or steel wire 50. The steel wire 50 is extensible and retractable into and out of the cap 16. But at no point does Cassai discuss that the steel wire 50 includes two wires as now included within amended claim 1 as well as all of its dependent claims. Therefore, for arguments consistent with those made with regard to Anderson, Applicant asserts that claim 1 as well as its dependent claims are patentably distinct from Cassai.

Claim Rejection — 35 U.S.C. § 103 — Ennio

Claims 1, 5-11, 16-18, and 29-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over French Patent No. 2,798,267 to Ennio. Ennio discloses a curved brush as shown in FIGS. 1-5 and a rectilinear brush, as shown in FIGS. 6-8. The rectilinear brush is angled such that the brush may come in contact with a wall of a receptacle, which houses the brush. There is no further teaching as to what angle the brush is positioned relative to a handle. That brush is angled to a large enough degree to contact the walls. At no point does Ennio disclose that the angle may be less than 20 degrees.

Claim Rejection — 35 U.S.C. § 103 — Anakama

Claims 1, 5-11, 16-18, and 19-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent Application No. 54-37173 to *Anakama*. The Examiner asserts that *Anakama* discloses the claimed invention except for the specific angle of the bristle carrying portion relative to the longitudinal axis of the rod. However, the Examiner believes that this angle would have been obvious to ascertain therefore leaving the claims for which *Anakama* is cited against obvious and unpatentable. As previously mentioned, claim 1 of the present application has been amended so as to include the recitation that the core is comprised of a twisted wire. Similar to *Anderson* and *Cassai*, *Anakama* does not disclose such a recitation and thus Applicant asserts that amended claim 1 as well as its dependent claims are patentably distinct over *Anakama* and should be allowed.

Further, the Examiner asserts that using a twisted-wire core is obvious and known in the art when discussing *Anakama*. Applicant asserts that the Examiner has not satisfied his *prima facie* evidence requirement of asserting why it is obvious and known. Simply because someone prior has used a twisted-wire core to make mascara brushes does not mean that it would be obvious to modify *Anakama* as well as the other references discussed herein by including a twisted-wire core. The Examiner must show some motivation for such a modification.

Claim Rejection — 35 U.S.C. § 103(a) — Anakama/Gueret

Claims 2-4, 12-15, and 19-28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Anakama* as applied to claim 1 and further in view of U.S. Patent No. 5,918,994 to

Gueret. Gueret is cited for teaching mascara brushes having various non-circular cross-sections, as well as additional features such as longitudinal ribs; plain surfaces; and the like. Regardless, Gueret does not make up for the deficiencies in Anakama and specifically having a twisted-wire core which is bent at an angle between 0.2 and 20 degrees relative to a longitudinal axis of a rod. Therefore, Applicant asserts that all of the references, either in combination or individually, do not disclose all of the recitations included within amended claim 1 as well as the dependent claims.

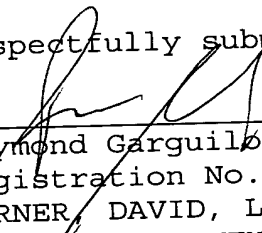
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 10, 2006

Respectfully submitted,

By 
Raymond Garguilo, Jr.
Registration No.: 50,930
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant